

NSA STAFF PROCESSING FORM

TO DIRECTOR	EXREG CONTROL NUMBER 84735	KCC CONTROL NUMBER IG-10089-02
THRU D/DIR	D SECRETARIAT	ACTION <input type="checkbox"/> APPROVAL <input checked="" type="checkbox"/> SIGNATURE <input type="checkbox"/> INFORMATION
SUBJECT Quarterly Report to the Intelligence Oversight Board on NSA Activities—Fourth Quarter FY02 (U//FOUO)		EXREG SUSPENSE KCC SUSPENSE ELEMENT SUSPENSE
DISTRIBUTION		

SUMMARY

PURPOSE: (U//FOUO) To forward to the Intelligence Oversight Board (IOB) of the President's Foreign Intelligence Advisory Board, via the Assistant to the Secretary of Defense for Intelligence Oversight (ATSD(IO)), NSA's quarterly report on its intelligence activities.

BACKGROUND: (U//FOUO) Executive Order 12333 and Executive Order 12863 require Intelligence Community agency heads and Intelligence Community General Counsels and Inspectors General, respectively, to report to the IOB on a quarterly basis concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive Order or Presidential Directive. The enclosed memorandum covers all reportable activities known to the Inspector General and General Counsel. Per PIOB letter of 6 August 1982, Agency heads are responsible for reporting separately any additional reportable activities known to them, unless the President has specifically instructed that the Board is not to be informed. The Director's signature signifies that no other activities that require reporting are known to him.

RECOMMENDATION: (U//FOUO) Director sign the enclosed memorandum.

Thank

Approved for Release by
NSA on 12-22-2014, FOIA
Case # 70809 (Litigation)

(b) (3) - P.L. 86-36

DECLASSIFY UPON REMOVAL OF THE ENCLOSURE(S)

COORDINATION/APPROVAL

OFFICE	NAME AND DATE	SECURE PHONE	OFFICE	NAME AND DATE	SECURE PHONE
GC	Robert Deitz <i>11/25/02</i>	5548s			
AGC(O)		3121s			
IG	Joel F. Brenner <i>11/25/02</i>	3544s			
DOS	<i>11/26</i>	3201			
ORIGINATOR			ORG. D11	PHONE (Secure) 963-3544	DATE PREPARED 19 November 2002

~~TOP SECRET//COMINT//TALENT KEYHOLE//NOFORN//XI~~

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G MEADE MARYLAND 20755-6000

4 December 2002

MEMORANDUM FOR THE CHAIRMAN, INTELLIGENCE OVERSIGHT BOARD

THRU: Assistant to the Secretary of Defense (Intelligence Oversight)

SUBJECT: (U//~~FOUO~~) Report to the Intelligence Oversight Board on NSA
Activities - INFORMATION MEMORANDUM

(U//~~FOUO~~) Except as previously reported to you or the President, or otherwise stated in the enclosure, we have no reason to believe that any intelligence activities of the National Security Agency during the quarter ending 30 September 2002 were unlawful or contrary to Executive Order or Presidential Directive, and thus required to be reported pursuant to Section 1.7.(d) of Executive Order 12333.

(U//~~FOUO~~) The Inspector General and the General Counsel continue to exercise oversight of Agency activities by means of inspections, surveys, training, review of directives and guidelines, and advice and counsel. These activities and other data requested by the Board or members of the staff of the Assistant to the Secretary of Defense (Intelligence Oversight) are described in the enclosure.

A handwritten signature of Joel F. Brenner in black ink, written over a horizontal line.

JOEL F. BRENNER
Inspector General

A handwritten signature of Robert L. Deitz in black ink, written over a horizontal line.

ROBERT L. DEITZ
General Counsel

(U//~~FOUO~~) I concur in the report of the Inspector General and the General Counsel and hereby make it our combined report.

A handwritten signature of Michael V. Hayden in black ink, written in a cursive style.

MICHAEL V. HAYDEN
Lieutenant General, USAF
Director, NSA/Chief, CSS

Encl:
a/s

This Memorandum is Unclassified
Upon Removal of Enclosure

DERIVED FROM: NSA/CSSM 123-2
DATED: 24 FEB 98
DECLASSIFY ON: X1

~~TOP SECRET//COMINT//TALENT KEYHOLE//NOFORN//XI~~

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(b) (1)
(b) (3) - P.L. 86-36
(b) (3) - 50 USC 3024 (i)

1. (U) INSPECTOR GENERAL ACTIVITIES

a. ~~(C//SI)~~ During this quarter, the Office of Inspector General (OIG) reviewed various intelligence activities of the National Security Agency/Central Security Service (NSA/CSS) to determine whether they were conducted in accordance with applicable statutes, Executive Orders, Attorney General procedures, and DoD and internal directives. With few exceptions, the issues presented were routine and indicated that the operating elements understand the restrictions on NSA/CSS activities.

b. ~~(S//TK)~~ The OIG received an email from the Inspector General, [REDACTED] in which he said that an unidentified employee who had attended a town meeting at [REDACTED] alleged that during the meeting, an NSA employee expressed concern that [REDACTED] may have been processing communications signals in violation of USSID-18. It was further alleged that a high ranking official of NSA, the SIGINT Director, was present and not only failed to stop or investigate the violations, but also encouraged a more liberal interpretation of USSID-18. The OIG inquiry into this matter determined that the allegations were not substantiated. Numerous interviews with persons present at the town meeting support the conclusion that no violation of USSID-18 was discussed, that the SIGINT Director was not present at the meeting, and that no person was encouraged to violate, or give a new and unauthorized interpretation to USSID-18. The OIG inquiry final report is attached as Enclosure A. (b)(3)-P.L. 86-36

c. ~~(S//TK)~~ The OIG received a request from the Inspector General, [REDACTED] to conduct an inquiry into the alleged improper destruction of Intelligence Oversight (IO) quarterly report files at [REDACTED] to determine whether the records were destroyed in accordance with applicable laws and regulations. Our inquiry concluded that no laws or regulations were violated in the matter, and that current quarterly report records-keeping practices at [REDACTED] are consistent with those of other field sites. The OIG inquiry final report is attached as Enclosure B.

2. (U) GENERAL COUNSEL ACTIVITIES

a. ~~(C//SI)~~ The OGC reviewed various intelligence activities of the NSA/CSS to determine whether they were conducted in accordance with applicable statutes, Executive Orders, Attorney General procedures, and DoD and internal directives. The OGC advised Agency elements on a number of questions, including the collection and dissemination of communications of or concerning U.S. persons; the

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reporting of possible violations of federal criminal law contained in SIGINT product; the testing of electronic equipment; and the applicability of the FISA. With few exceptions, the issues presented were routine and indicated that the operating elements understand the restrictions on NSA/CSS activities. The OGC did not file any reports with the Intelligence Oversight Board during this quarter.

3. (U) SIGINT ACTIVITIES

a. ~~(S//SI)~~ Collection Against U.S. Persons

(b) (1)
(b) (3) - P.L. 86-36
(b) (3) - 18 USC 798
(b) (3) - 50 USC 3024(i)

(1) (U) Intentional

~~(S//SI)~~ During this quarter, the DIRNSA granted approval for consensual collection against [] persons; DIRNSA-approved consensual collection against [] U.S. persons was routinely terminated this quarter.

~~(S//SI)~~ The Attorney General granted authority to collect the communications of [] U.S. persons during this quarter. However, collection was suspended on one of the individuals due to his arrest in [] and subsequent extradition to the United States where he is now in detention.

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(2) (U) Unintentional

~~(S//SI//NF)~~ This quarter, unintentional retrieval strategies using the [] raw traffic files resulted in [] incidents against U.S. persons. All incidents were reported to responsible oversight officials and corrective actions were taken.

(b) (1)
(b) (3) - P.L. 86-36

b. (U//~~FOUO~~) Dissemination of U.S. Identities

(1) (U) Intentional

~~(S//SI)~~ In accordance with section 7 of USSID 18, [] U.S. identities were disseminated. The following table shows the justification and the number of instances of dissemination: in the "Unmasked" column, the U.S. identity was revealed in a serialized end product; in the "User Requested" column, a U.S. identity was released to a user at the user's request.

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JUSTIFICATION	Unmasked	User Requested	TOTAL
7.2.c Necessary			
7.2.c.1 Foreign Official			
7.2.c.3 International narcotics			
7.2.c.4 Criminal activity			
7.2.c.7 U.S. Government Official			
TOTAL			

(2) (U) Unintentional(b) (1)
(b) (3) - P.L. 86-36

~~(S//SI)~~ During this quarter, [] SIGINT products were canceled because they contained the identities of U.S. persons, organizations, or entities.

4. (U) OTHER ACTIVITIES**(U) Integrees in Analysis and Production**

~~(S//SI//NF)~~ During this quarter, []

[]

[] In all cases, these individuals were provided with USSID 18 training. Organizations having integrees at NSA included []

[]

[] In addition, a verbatim transcript on which a SIGINT report was based was provided electronically to the []

[]

(b) (3) - P.L. 86-36

(U) Assistance to Law Enforcement

~~(S//SI//NF)~~ The []

[] provided support to [] during the quarter. This support included []

(b) (1)
(b) (3) - P.L. 86-36
(b) (3) - 18 USC 798
(b) (3) - 50 USC 3024(i)

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(b) (1)
 (b) (3) - P.L. 86-36
 (b) (3) - 18 USC 798
 (b) (3) - 50 USC 3024(i)

~~(TS//SI//NF)~~ Inadvertent Retention of FISA-Derived Intercept

~~(TS//SI//NF)~~ While cleaning out old files, analysts in a SID organization discovered several pieces of FISA-derived [redacted] intercept, dated between [redacted]

[redacted] that had been inadvertently filed and retained. (b) (1)

The intercept was destroyed immediately. All division personnel who handle (b) (3) - P.L. 86-36 FISA-derived intercept have been reminded of the FISA minimization procedures as outlined in USSID-18 and have been counseled on the proper procedures for handling and disseminating [redacted] intercept and the restrictions against retaining such intercept. Procedures for handling this material within the division have been streamlined to minimize the possibility that such an incident will reoccur.

(U) Working Aids

(U) No new working aids were developed during the quarter.

(U) Databases

~~(S//SI)~~ Numerous branches in [redacted]

[redacted] consistent with OGC guidance [redacted]

[redacted] to avoid USSID-18 violations.

Only information that is essential to understanding the intelligence is included.

[redacted] Additionally, many Offices of Primary Interest [redacted]

[redacted] in order to ensure that they are not collected against or named in product.

(b) (1)
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~~SECRET//TK//X1~~
 NATIONAL SECURITY AGENCY
 CENTRAL SECURITY SERVICE
 FORT GEORGE G. MEADE, MARYLAND 20755-6000

(b) (3)-P.L. 86-36

23 October 2002

MEMORANDUM FOR INSPECTOR GENERAL, [REDACTED]

(b) (1) **SUBJECT:** Inquiry Into Alleged USSID 18 Violation Disclosed During a Town Meeting

(b) (3)-P.L. 86-36

(b) (3)-50 USC 3024(i)

at [REDACTED] ~~(S//TK)~~

~~(S//TK)~~ This memorandum responds to your email message to Joel Brenner, our Inspector General, dated 20 September 2002, retransmitting a message from your staff dated 9 September 2002, which we had not previously received. [REDACTED]

[REDACTED] Attached to the message was a one-page "Summary of Alleged Violation of USSID 18/E.O. 12333." The Summary states in relevant part:

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Disclosure of the alleged violation ... occurred during a town meeting at [REDACTED] while the Director, SIGINT/NSA served as guest speaker. During the town meeting, it was observed that [REDACTED] an NSA employee assigned to the [REDACTED] [REDACTED] voiced concern that [REDACTED] was processing communications signals that [REDACTED] [REDACTED] and occasionally needed to exceed the two-hour maximum timeline allowed under USSID 18. Reportedly, the Director, SIGINT responded that USSID 18 authorizes two hours - or the time necessary to determine the nature and amount of foreign intelligence included in the communications.

(b) (3)-P.L. 86-36

The gist of the allegation is (1) that [REDACTED] "was processing communications" signals in violation of USSID 18 and (2) that a high-ranking official of NSA, the SIGINT Director, not only failed to stop or investigate the violations (your Summary mentions communications in the plural, thus suggesting more than one violation), but also "encouraged a more liberal interpretation of USSID 18."

(b) (1)
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 (b) (3)-50 USC 3024(i)

(b) (3)-P.L. 86-36

~~(S//TK)~~ I infer that this is the same issue you raised when Mr. Brenner and [REDACTED] our Inspections Chief, visited you [REDACTED] You then advised them of an unspecified violation at [REDACTED] but provided no details.

~~(S//TK)~~ We have not been made privy to the identity of the person who witnessed these events or made this allegation. We have therefore not been able to interview your source of information, assuming it is not one of the persons mentioned in the Summary.

~~(S//TK)~~ [REDACTED] you sent Mr. Brenner a further email message stating that the "referenced meeting took place in [REDACTED], who still works at the [REDACTED] may have knowledge of the facts." Fortunately, [REDACTED] is now

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(b) (1)
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 (b) (3)-50 USC 3024(i)

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This document is classified SECRET//TK due to the compilation of otherwise unclassified information.

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(b) (3)-50 USC 3024(i)

employed here at NSA, and [] was available by secure telephone, and we were able to interview both of them immediately. Let me share with you what they say about these allegations.

(b) (3)-P.L. 86-36

~~(S//TK)~~ [] told us: "First, I would like to state for the record my *outrage* [her italics] at the suggestion that I witnessed a violation of USSID 18 at [] and did not report it. If I were witness to such a violation, then I certainly would not try to report such an infraction indirectly via an informal question at a town meeting." According to [] the question she asked was directed to what would happen if the terms of USSID 18 unduly proved constraining. She added that in her opinion, [] is in fact extremely rigorous in its efforts to ensure that USSID 18 and the [] are upheld."

~~(S//TK)~~ [] said that her question to DIRNSA was inspired, in part, by comments made by NSA Deputy Director, Mr. William Black, during [] We viewed a copy of the videotape of Mr. Black's address during which he commented on the challenges of doing business in the world of new technology using documents and authorities written in an "analog world." He stated, "If a policy is in your way, it is incumbent upon you to let us know what they are." He could not reasonably be understood to have "encouraged a more liberal interpretation of USSID 18."

(b) (1)
(b) (3)-P.L. 86-36
(b) (3)-50 USC 3024(i)

~~(S//TK)~~ [] is employed as [] (not [] as your source informed you). She stated that she was present at the town meeting and remembers [] question essentially as [] represented it to us. [] told us that she has no knowledge of any USSID 18 violation by a [] employee.

(b) (3)-P.L. 86-36

~~(S//TK)~~ In the interest of conducting a thorough investigation, we contacted [] who was present at the meeting. She told us that the Director, NSA was at the meeting, but that the NSA SIGINT Director, was not. [] did not remember [] question. She added, however, that said she certainly would have remembered if someone at the meeting had disclosed a possible USSID 18 violation.

(b) (3)-P.L. 86-36

~~(S//TK)~~ We also contacted several [] employees who had attended the meeting. Those who remembered [] question recalled it as [] represented it to us. None of those persons took her comments as a disclosure of a USSID 18 violation.

(U) We therefore find the allegation unsubstantiated.

~~(S//TK)~~ Our office takes such allegations very seriously. Indeed, we encourage and to some degree depend on volunteered information to supplement the information we develop through our own initiative, and we are grateful for your assistance in bringing this particular allegation to our attention, regardless of the fact that we find it

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~~SECRET//TK//X1~~

unsubstantiated. We share your deep concern that SIGINT activities must be conducted both efficiently and in strict conformity with the nation's laws and Constitution; and further, that we must remain constantly vigilant in this area. Early in Mr. Brenner's tenure, our Director, Lt. Gen. Michael V. Hayden, gave him the opportunity to make this point to the entire NSA workforce, using the Agency's internal television network, and he did so on 22 July 2002 (<http://www.nsa/IG/briefings.html>).

(U) Thank you again for bringing this matter to our attention.



Senior Assistant Inspector General
for
Investigations

(b) (3) - P.L. 86-36

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~~SECRET//TK//X1~~
 NATIONAL SECURITY AGENCY
 CENTRAL SECURITY SERVICE
 FORT GEORGE G. MEADE, MARYLAND 20755-6000

23 October 2002

MEMORANDUM FOR INSPECTOR GENERAL, [REDACTED]

(b) (3) - P.L. 86-36

SUBJECT: Inquiry Into the Destruction of Intelligence Oversight (IO) Quarterly Report (QR) Files (U) - INFORMATION MEMORANDUM

~~(S//TK)~~ This memorandum responds to your request that the NSA/CSS Office of Inspector General (OIG) conduct an inquiry into the destruction of Intelligence Oversight (IO) Quarterly Report (QR) files at [REDACTED]. You recommended that the OIG conduct an inquiry to determine whether the records were destroyed in accordance with applicable laws and regulations, and to determine the circumstances surrounding the change in policy no longer requiring the retention of QR files and documentation.

~~(S//TK)~~ We conducted a thorough inquiry in the matter, including interviews of the current and former Intelligence Oversight (IO) officers, Operations Chiefs and other individuals knowledgeable of the QR records retention policies and practices at [REDACTED]. We also queried the NSA Office of General Counsel regarding legal advice, if any, which may have been rendered to [REDACTED] in the matter. Finally, we conducted additional queries to determine if the practices currently employed at [REDACTED] are consistent with those at other field sites. We concluded that that no laws or regulations were violated in the matter, and that the current QR records-keeping practices at [REDACTED] are consistent with those of other field sites.

(b) (3) - P.L. 86-36

~~(S//TK)~~ The inquiry revealed that the IO officer at [REDACTED] unilaterally determined to purge the QR files of documents relating to the inadvertent collection of U.S. person communications that you had reviewed during the [REDACTED] Joint Inspection. The IO officer stated that when he reviewed the files after the Inspection, he found miscellaneous documents going back "at least ten years" that related to inadvertent collections of U.S. person communications, even though the intercepts themselves were immediately destroyed upon recognition.

~~(S//TK)~~ The IO officer stated that he was not directed or advised by anyone from [REDACTED] or NSA Headquarters to destroy the documents; rather he made the decision based on his experience and knowledge of QR records-keeping practices and regulations. The IO officer's statement is supported by witness testimony and other evidence collected during our inquiry. The NSA Office of General Counsel had no record or recollection of advice to the IO officer or to [REDACTED] in this matter. Nor do the IO officers we interviewed.

~~This document is classified SECRET//TK due to the compilation of otherwise unclassified information.~~

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~~(S//TK)~~ As you are aware, there are no requirements under Executive Order 12333 and USSID 18 to retain documentation relating to inadvertent collections of U.S. person communications that have been destroyed upon recognition; nor do they exist under the NSA OIG *Procedures for the E.O. 12333 Quarterly Reporting*, or under the [] internal *Executive Order 12333 Quarterly Reporting Procedures*.

~~(S//TK)~~ To the contrary, we found that the NSA Signals Intelligence Directorate Office of Compliance (SID OC) supported the IO officer's actions, after the fact, advising that when U.S. person communications are destroyed upon recognition, a record should not be created to document the incident. This advice is consistent with applicable law and policy.

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~~(S//TK)~~ We contacted several field sites to determine the practices for maintaining QR files. All the sites reported that they maintained QRs electronically. A few also maintained hard copies of QRs and back up documentation of potential violations of E.O. 12333 and USSID 18 that were reported to the NSA Office of General Counsel and the NSA OIG. None of the sites retained documentation, either electronically or on paper, of inadvertent collection of U.S. person communications when the intercepts were destroyed. Accordingly, we find the current practice followed at [] to be consistent with the practice followed at other field sites.

~~(S//TK)~~ During the Joint IG Reinspection at [] in September 2002, team members reviewed the IO QR files, both hard copy and electronic. They found that the files contained copies of the QRs and back-up documentation relating to reportable violations from 1997. Based on our inquiry, we consider the current records retention practices at [] to be in accordance with applicable law and NSA regulations.

~~(S//TK)~~ Thank you for bringing this matter to our attention. If you have any questions, please contact me or [] at 963-0921(S).

(b) (3) - P.L. 86-36

[]
Senior Assistant Inspector General
for
Investigations

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